



[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**[Docket Nos. 52-022 and 52-023; NRC-2013-0261]**

**Duke Energy Progress; Shearon Harris Units 2 and 3**

**Exemption from the Requirement to Submit an Annual Update to**

**the Final Safety Analysis Report**

**Included in a Combined License Application**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an August 7, 2013, request from Duke Energy Progress (DEP). On May 2, 2013, DEP requested that the NRC suspend review of its combined license (COL) application until further notice. On August 7, 2013, DEP requested an exemption from certain regulatory requirements that require them to submit updates to the Final Safety Analysis Report (FSAR) included in their COL application until six months after requesting the NRC to resume its review of their COL application. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption, but stipulated that the updates to the FSAR must be submitted prior to requesting the NRC resume its review of the COL application, or by December 31, 2014, whichever comes first.

**ADDRESSES:** Please refer to Docket ID **NRC-2013-0261** when contacting the NRC about the availability of information regarding this document. You may access publicly-available

information related to this action by the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2013-0261**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**  
You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Anthony Minarik, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001; telephone: 301-415-6185; e-mail: [anthony.minarik@nrc.gov](mailto:anthony.minarik@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

The following sections include the text of the exemption in its entirety as issued to DEP.

## **1.0 Background**

On February 18, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML080580078) Duke Energy Progress, Inc. (DEP), submitted to the U.S. Nuclear Regulatory Commission (NRC) a Combined License (COL) application for two units of Westinghouse Electric Company's AP1000 advanced pressurized water reactors to be constructed and operated at the existing Shearon Harris Nuclear Plant (Harris) site. (Docket Numbers 052000-22 and 052000-23). The NRC docketed the Shearon Harris Units 2 and 3 COL APPLICATION on April 23, 2008. On April 15, 2013, DEP submitted Revision 5 to the COL application (ADAMS Accession No. ML13112A761), including updates to the Final Safety Analysis Report (FSAR), per subsection 50.71(e)(3)(iii) of Title 10 of the *Code of Federal Regulations* (10 CFR). On May 2, 2013 (ADAMS Accession No. ML13123A344), DEP requested that the NRC suspend review of the Shearon Harris Nuclear Plant Units 2 and 3 COL application. On August 7, 2013 (ADAMS Accession No. ML13220B004), DEP requested an exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit COL application Final Safety Analysis Report (FSAR) updates.

## **2.0 Request/Action**

10 CFR 50.71(e)(3)(iii) requires that an applicant for a COL under Subpart C of 10 CFR part 52, submit updates to their FSAR annually during the period from docketing the application to the Commission making its 52.103(g) finding.

Pursuant to 10 CFR 50.71(e)(3)(iii) the next annual update of the FSAR included in the Harris Units 2 and 3 COL application would be due in April of 2014 as DEP had submitted Revision 5 to the COL application which included an update to the FSAR, in a letter dated April 15, 2013 (ADAMS Accession No. ML13112A761). By letter dated May 2, 2013, (ADAMS Accession No. ML13123A344) DEP requested that the NRC suspend review of the Harris Units

2 and 3 COL application. The NRC granted DEP's request for suspension and all review activities related to the Harris Units 2 and 3 COL application were suspended while the application remained docketed. In a letter dated August 7, 2013 (ADAMS Accession No. ML13220B004), DEP requested that the Harris Units 2 and 3 COL application be exempt from the 10 CFR 50.71(e)(3)(iii) requirements until the time that DEP requests the NRC to resume the review of the Harris Units 2 and 3 COL application.

DEP's requested exemption is interpreted as a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). In its request, DEP asked the NRC to grant the exemption from 10 CFR 50.71(e)(3)(iii), until six months after restarting the Harris Units 2 and 3 COL application review. Because such a request is seen as open-ended, the NRC included an imposed December 31, 2014, deadline as part of its review of the exemption request. The exemption would allow DEP to submit the next FSAR update at a later date, but still in advance of NRC's reinstating its review of the application and in any event, by December 31, 2014. The current requirement to submit an FSAR update could not be changed, absent the exemption.

### **3.0 Discussion**

Pursuant to 10 CFR 50.12 the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, including Section 50.71(e)(3)(iii) when: (1) the exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule" (10 CFR 50.12(a)(2)(ii)) and if "[t]he exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation" (10 CFR 50.12(a)(2)(v)).

The purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most up to date information regarding the COL application, in order to perform an efficient and effective review. The rule targeted those applications that are being actively reviewed by the NRC. Because DEP requested the NRC suspend its review of the Harris Units 2 and 3 COL application, compelling DEP to submit its FSAR on an annual basis is not necessary as the FSAR will not be changed or updated until the review is restarted. Requiring the updates would result in undue hardship on DEP, and the purpose of 50.71(e)(3)(iii) would still be achieved if the update is submitted prior to restarting the review and in any event by December 31, 2014.

The requested exemption to defer submittal of the next update to the FSAR included in the Harris Units 2 and 3 COL application would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii). As evidenced by the proper submittal of annual updates on June 23, 2009 (ADAMS Accession No. ML091810540), April 12, 2010 (ADAMS Accession No. ML101120592), April 14, 2011 (ADAMS Accession No. ML11117A708), April 12, 2012 (ADAMS Accession No. ML12122A656) and April 15, 2013 (ADAMS Accession No. ML13112A761), DEP has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) prior to requesting suspension of the review. In its request DEP asked the NRC to grant exemption from 10 CFR 50.71(e)(3)(iii) until 6 months after reactivating the Harris Units 2 and 3 COL application review. With no specific end date, the NRC could not consider this exemption temporary, so the NRC included a December 31, 2014 deadline as part of its review of the exemption request.

For the reasons stated above, the application of § 50.71(e)(3)(iii) in this particular circumstance can be deemed unnecessary and the granting of the exemption would allow only temporary relief from a rule that the applicant had made good faith efforts to comply with, therefore special circumstances are present.

#### Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow DEP to submit the next Harris Units 2 and 3 COL application FSAR update on or before December 31, 2014, in lieu of the required scheduled submittal in April 2014. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting DEP the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

#### No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR part 52, for which a license has not been granted. In addition, since the review of the application has been suspended, any update to the application submitted by DEP will not be reviewed by the NRC at this time. Plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed, and a license is issued. Additionally, based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

### Consistent with Common Defense and Security

The requested exemption would allow DEP to submit the next FSAR update prior to requesting the NRC to resume the review and, in any event, on or before December 31, 2014. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

### Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii) are present “[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule” (10 CFR 50.12(a)(2)(ii)). The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most up-to date information in order to perform its review of a COL application efficiently and effectively. Because the requirement to annually update the FSAR was intended for active reviews and the Harris Units 2 and 3 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption, and DEP were then required to update its FSAR by December 31, 2014, or prior to any request to restart of their review, the purpose of the rule would still be achieved.

Special circumstances in accordance with 10 CFR 50.12(a)(2)(v) are present whenever the exemption would provide only temporary relief from the regulation and the applicant has made good faith efforts to comply with this regulation. Because of the assumed and imposed new deadline of December 31, 2014, DEP's exemption request seeks only temporary relief from the requirement that it file an update to the FSAR included in the Harris Units 2 and 3 COL application. Additionally DEP submitted the required annual updates to its FSAR throughout the application process until asking for suspension of its review.

Therefore, since the relief from the requirements of 10 CFR 50.71(e)(3)(iii) would be temporary and the applicant has made good faith efforts to comply with the rule, and the underlying purpose of the rule is not served by application of the rule in this circumstance, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 50.12(a)(2)(v) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

Eligibility for Categorical Exclusion from Environmental Review:

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there is no significant hazards consideration because granting the proposed exemption would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.



(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated FSAR by DEP  
and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting FSAR updates to the NRC.

#### **4.0 Conclusion**

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances are present. Therefore, the Commission hereby grants DEP a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the Shearon Harris Nuclear Power Plant Units 2 and 3 COL application to allow submittal of the next FSAR update prior to any request to the NRC to resume the review, and in any event no later than December 31, 2014.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of November 2013.

FOR THE NUCLEAR REGULATORY COMMISSION

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